

REMARKS

The Final Office Action of September 12, 2011 has been carefully considered. Reconsideration of this application, and entry of the proposed amendments, is respectfully requested.

Finality of Office Action is Premature

The Final Office Action of September 12, 2011 is respectfully urged to be premature in that the “new ground(s) of rejection” are the same as rejections that were previously withdrawn rejections - see e.g., pp. 9, 16, 18 and 21 of the Final Office Action dated June 10, 2010, and note that the Office Action of Feb. 18, 2011 includes NO rejections under 35 U.S.C. §103. Moreover, as the basis for making the current Office Action final, the Examiner incorrectly urges that amendments necessitated the new ground(s) of rejection.

Upon review of the recent prosecution history, it is apparent that while the Examiner had the opportunity to continue the rejections in the Office Action of February 18, 2011, after Applicants’ most recent Request for Continued Examination, the Examiner failed to do so and only set forth a 35 U.S.C. §112 rejection therein. Accordingly, it was understood, particularly in view of the brief telephonic interview held with the Examiner (see summary at p. 8 of the response filed June 20, 2011) that the prior 35 U.S.C. §103 rejections had been overcome and that the only remaining issue was addressing the §112 rejection. As Applicants’ amendments in June 2011 merely addressed the terms used to characterize the ozone mixing system, it is unclear how such amendments necessitated “new” grounds for rejection. Moreover, the grounds are not new at all, as the same claims are rejected over the same references set forth in the earlier rejections. Thus, the Examiner has no basis for making the current Office Action final as such rejections should have been set forth in the office action of February 2011.

While it may be in the Examiner’s purview to reinstate previously withdrawn rejections, doing so in a Final Office Action precludes Applicants an opportunity to respond to the rejections as of right. Accordingly, Applicants respectfully request that the finality of the instant action be withdrawn and that Applicants be permitted to further respond to the rejection as of right. Alternatively, Applicants at least request

entry of the proposed amendments presented herein in order to address the Examiner's current allegation that terms characterizing the ozone mixing system are merely functional limitations. Such limitations were not previously presented as the rejections were believed to have been overcome. Nor does entry of the proposed amendments result in a need for further searching or otherwise present an examination burden.

Summary of Rejections

Claims 1-3, 5, 7, 9, 18, 20-23, 25-31, and 33-34 were once again rejected under 35 U.S.C. §103(a) as being unpatentable over Contreras (U.S. patent No. 5,824,243) in view of Burris (U.S. patent No. 5,207,993; "Burris '993"). Claim 1 was rejected under 35 U.S.C. §103(a) as being unpatentable over Burris ('993) in view of Contreras. Claims 1-3, 5, 7-16, 18, 20-23, 25-29, and 33-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Engelhard et al. (U.S. patent No. 5,942,125) in view of Burris '993. Claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over Engelhard in view of Burris '993 or Contreras in view of Burris '993 as applied to claim 1, and further in view of McMahon (U.S. Patent No. 5,681,370).

35 U.S.C. §103(a) Rejections Respectfully Traversed

Claims **1-3, 5, 7, 9, 18, 20-23, 25-31, and 33-34** were once again rejected under 35 U.S.C. §103(a) as being unpatentable over Contreras in view of Burris '993. Applicants respectfully traverse the rejection once again.

Applicants respectfully submit that the suggested combination fails to support all the limitations recited in amended independent claims 1 or 30. Among other limitations, Applicants respectfully urge that Contreras and Burris '993, directed to on-demand or batch systems, fail to teach an ozone mixing system that mixes and dissolves ozone containing gas in liquid to produce a quantity of ozonated liquid that is, while the device is operating, greater than the amount that is demanded by the operatory unit. Nor does the combination, alone or together, disclose a continuous circulation system that continuously re-circulates liquid containing dissolved ozone through a pressurized liquid recirculation passageway connected to and providing liquid to the operatory unit, the circulation system including a back pressure control to maintain

pressure sufficient to dispense the ozonated liquid from the recirculation passageway, as set forth in the rejected independent claims.

Neither Contreras nor Burris '993 are believed to mix ozone and liquid to produce a quantity of ozonated liquid that is greater than the amount demanded by the operatory unit, and thereby assure that liquid is recirculated. Notwithstanding the Examiner's reliance on Contreras, taking the example at col. 3 in context, it is clear that Contreras is an on-demand system and that the pump only operates to provide water or recirculate when the pump motor is activated (see col. 3, lines 28-29 and 47-48). On this basis alone, Applicants respectfully submit that the independent claims are patentably distinct over the alleged combination.

Applicants once again urge that the Examiner has failed to appreciate limitations relative to the recited control system (e.g., claim 1) and that neither Contreras nor Burris '993, alone or in combination, teach a control system including an ozone sensor located in a liquid recirculation passageway, and an alarm to indicate whether the device is operating properly (e.g., claim 1). As noted previously, at best the cited elements may ensure that water contains dissolved ozone or that the system is shut down due to lack of water. There is no teaching, however, of a control system including an alarm to indicate whether the device is operating properly (e.g., claim 1) or to monitor the liquid level in a treatment chamber (e.g., claim 30).

In light of the previous amendments to claims 1 and 30, as well as the proposed amendments and arguments above, independent claims 1 and 30 are believed to be patentably distinguishable over a combination of Contreras in view of Burris '993. Accordingly, the rejection is traversed, and Applicants respectfully submit that independent claims 1 and 30 are, once again, in condition for allowance, as are all claims dependent from claim 1.

For purposes of brevity, Applicants have not specifically addressed the limitations of each of the rejected claims dependent from amended independent claims 1 or 30, but respectfully urge them to be patentable for the reasons set forth relative to claims 1 and 30. Applicants reserve the right to further submit separate arguments in support of the dependent claims in a subsequent communication or on appeal.

Claim 1 was rejected under 35 U.S.C. §103(a) as being unpatentable over Burris ('993) in view of Contreras. This rejection is respectfully traversed.

In addition to the distinctions noted above, Applicants respectfully submit that the Examiner continues to take the teachings of Burris '993 out of context. Once again, the Examiner mistakenly urges that Burris '993 teaches "[a] continuous circulation system, i.e., circulation loop, draws liquid from reservoir 36 via line 16 through pumping system 20 (which is a pressure regulator) and returns purified liquid to the reservoir via line 41. Therefore, the circulation system re-circulates liquid containing dissolved ozone and is capable of continuous circulation (Col. 5, 11.59-67)." (Final Office Action, p. 11) Applicants continue to respectfully disagree and point out for the Examiner that Burris '993 is directed to a batch system and that the circulation described is only while purification occurs (col. 5, lines 20 – 23). While teaching circulation during a batch purifying operation, Burris '993 clearly indicates that after purifying circulation, the output route is changed to flow to an outlet from the pumping system and the ozone generator is turned off when this occurs. (e.g., col. 5, line 50 – col. 6, line 4) Such a teaching, of a batch mode, is believed contrary to the limitations set forth in amended claim 1.

Furthermore, in setting forth the renewed rejection, the Examiner continues to conclude "it would have been obvious to one of ordinary skill in the art at the time the invention was made to connect the outlet of the device disclosed by Burris to an operatory unit in order to supply the operatory unit with sterile water as exemplified by the device of Contreras whom teaches that it is well known to generate sterilized ozonated water for use in operatory units." Applicants once again note that while this could be true if the claimed device was intended to output sterile water, the claimed device disinfects operatory unit water and lines which requires outputting water containing dissolved ozone as set forth in the claims. There is a difference as one skilled in the art would appreciate.

It remains unclear to Applicants, and thus to one of ordinary skill in the art, how the Examiner arrives at a conclusion that a continuous circulation system is taught, let alone one that re-circulates liquid containing dissolved ozone and at the same time provides it to the operatory unit in view of Burris '993 teaching away from such an invention. Applicants respectfully submit that the alleged combination would not

have taught to one of ordinary skill in the art what has been alleged, and withdrawal of the rejection relative to claim 1 is respectfully requested.

Claims **1-3, 5, 7-16, 18, 20-23, 25-29, and 33-34** were rejected under 35 U.S.C. §103(a) as being unpatentable over Engelhard et al. in view of Burris '993. This rejection is also respectfully traversed.

In addition to the distinctions previously noted, Applicants respectfully submit that Engelhard also fails to teach all of the recited limitations of claim 1, as well as claims dependent therefrom. For example, Engelhard fails to teach an ozone mixing system that produces ozonated liquid in a quantity greater than the amount that is demanded by the operatory unit. In view of the further amendments proposed to claim 1, and arguments presented herein, Applicants respectfully urge that claim 1 is patentably distinguishable over the teachings of Engelhard and Burris '993, alone or in combination, and withdrawal of the rejection is respectfully requested. Again, for purposes of brevity, additional arguments relative to the dependent claims are reserved for a further response or on appeal.

Claim **24** was rejected under 35 U.S.C. 103(a) as being unpatentable over Engelhard in view of Burris '993 or Contreras in view of Burris '993 as applied to claim 1, and further in view of McMahon (U.S. Patent No. 5,681,370). The rejection is also respectfully traversed.

Dependent claim 24, sets forth a relationship between the desiccant and the valves (note plurality) that are closed to prevent the desiccant's exposure to moist air when the device is not operated. Applicants respectfully urge that such limitations are not taught or suggested by McMahon valves 78 and 88 (switch between dry / purge modes), nor any combination as presently alleged therewith. Although McMahon teaches valves, they do not appear arranged to protect desiccant from exposure to moist air, and McMahon teaches away from such an embodiment in describing an open top for cavity 40 in which desiccant 50 is placed (e.g., col. 2, line 65 – col. 3, line 21). Furthermore, McMahon teaches the drying of desiccant 50 (col. 5, line 66 – col. 6, line 33) and thus is not concerned with reducing its exposure to moist air while not in operation. In view of the above-noted distinctions, and the clarifying amendments to claim 24, the rejection is respectfully traversed and withdrawal of the rejection is, once again, requested.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,

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